IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 19.04.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

Criminal Appeal Nos.803, 863 & 871 of 2001 and Crl.R.C.No.285/2002
and
Crl.M.P.No. 9069 of 2005 in Crl.R.C.
SR No. 46945 of 2005

Crl.Appeal No.803 of 2001

1. Alagarsamy (A-1)
2. Jothi (A4)
3. Andichami (A-7)
4. Renganathan (A-9)
5. Sakkaraimurthy (A-13)
6. Rajendran (A-15)
7. Ramar (A-40)

... Appellants/ Accused Nos.1, 4, 7, 9, 13, 15 and 40.

Vs.

1. State by Deputy Superintendent of Police,
District Crime Branch, Madurai.

*2. M. Kumar
Brought on record as Intervenor as
per order of Court dated
7.2.2006 made in Crl.M.P.Nos.8759 to 8761/05 and
also in pursuance of the order dated
13.8.2007. ... Respondent/Complainant.

Criminal Appeal No. 863 of 2001

1. Ponniah
2. Manikandan
3. Markandan
4. Rasam @ Ayyavu
5. Alaghu

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. Chockanathan
7. Chinna Odugan @ Chinna Ulunthan. ... Appellants/ Accused Nos.3, 5, 11, 12, 14, 20 and 22.

Vs.

1. State represented by
Deputy Superintendent of Police,
District Crime Branch, Madurai.

*2. M. Kumar
Brought on record as Intervenor as
per order of Court dated
7.2.2006 made in Crl.M.P.Nos.8759 to 8761/05 and
also in pursuance of the order dated
13.8.2007. ... Respondent/Complainant.

Criminal Appeal No. 871 of 2001

1. Manoharan
2. Sekar
3. Selvam ... Appellants/Accused Nos.8, 18 and 21.

Vs.

1. State, by
Deputy Superintendent of Police,
District Crime Branch, Madurai.

*2. M. Kumar
Brought on record as Intervenor as
per order of Court dated
7.2.2006 made in Crl.M.P.Nos.8759 to 8761/05 and
also in pursuance of the order dated
13.8.2007.
... Respondent/Complainant.

Crl.R.C.No. 285 of 2001

1. M. Kumar
2. Periyavar
3. Mayavar .. Petitioners/P.Ws. 2, 5 and 9.

Vs.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

1. The Deputy Superintendent of Police,
   District Crime Branch,
   Madurai District. .. Respondent/Complainant.

2. Duraipandi .. A-2
3. Manivasagam .. A-6
4. Dinakaran .. A-10
5. Karanthamalai .. A-16
6. Baskaran .. A-17
7. Tamilan .. A-19
8. Ambalam .. A-23
9. Sethu .. A-24
10. Kalanjiam .. A-25
11. Mani .. A-26
12. Sevagaperumal .. A-27
13. Elavarasan .. A-28
14. Asokan .. A-29
15. Ganesan .. A-30
16. Bharathidasan .. A-31
17. Kathirvel .. A-32
18. Thangamani .. A-33
19. Pandi .. A-34
20. Pugazhendhi .. A-35
21. Nagesh .. A-36
22. Maduraiveeran .. A-37
23. Kannan .. A-38
24. Selvam .. A-39 ... Respondents/Accused.

*Crl.M.P.No.9069 of 2005

1. M. Kumar
2. Periyavar
3. Mayavar ... Petitioner (Petitionrs in Crl.R.C.SR.No.46945/05 sought to be presented to this Court)

Vs

1. State by
The Deputy Superintendent of Police
District Crime Branch
Madurai District.

2. Alagarsamy
3. Ponniah
4. Jothi
5. Manikandan
6. Andichami
7. Manoharan

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. Renganathan
9. Markandan
10. Rasam @ Ayyavu
11. Sakkaraimurthy
12. Alaghu
13. Rajendran
14. Sekar
15. Chockanathan
16. Selvam
17. Chinna Odugan @ Chinna Ulunthan
18. Ramar ... Respondents
(Respondents in do)

Criminal Appeals filed under Section 374 of the Code of Criminal Procedure against the conviction and sentence imposed on the accused/respective appellants by the learned Principal Sessions Judge, Salem, in his Judgment dated 26.07.2001, made in Sessions Case No.10 of 2001.

Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure against the judgment passed by the learned Principal Sessions Judge, Salem in S.C.No.10 of 2001, dated 26-7-2001, in so far as it relates to the acquittal of respondents 2 to 24/Accused from the charges for offences under Sections 120-B, 148, 341, 506 (ii), 302 read with 34 read with 149 IPC and Section 302 read with Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, read with 149 read with 34 IPC.

*Crl.M.P.9069/05 in Crl.R.C.No.46945/05:-

Petition presented to this Court to condone the delay of 1065 days in filing Crl.R.C.SR.No. 46945/05 sought to be presented to this Court against the order of the Principal Sessions Judge, Salem dated 26.7.2001 and made in S.C.No.10 of 2001 in rspect of the acquittal of the respondents 2 to 18 from the charges for the offences under Sections 120-B, 341, 506 (ii), 302 r/w 149, 307 r/w 149 IPC and section 3 (2) (v) and section 3 (1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989.

WEB COPY

Mr. B. Sriramulu, Senior counsel for Mrs.P.V. Rajeswari:- For Appellants in C.A.803/2001.

Mr. S. Ashok Kumar, Senior counsel for Mr. A. Sashidharan:- For appellants in C.A.No.863/2001.
Mr. S. Ashok Kumar, Senior counsel for Mr. K. Jegannathan:- For Appellants-1 and 2 in C.A.No.871/2001 and for Respondents 2 to 20, 22 to 24 in Cr.R.C. No. 285/2002.

https://hcservices.ecourts.gov.in/hcservices/

Mr. M. Balasubramanian:- For Appellant-3 in C.A. No. 871/2001. (A21)

Mr. V. Gopinath, Senior counsel, assisted by Mr. V. Suresh for Mr. P. Rathinam :- For petitioner in Crl.R.C.No.285/2002.

Mr.P.Rathinam – Counsel for petrs. in Crl.M.P. Nos.9069 of 2005 in Crl R.C.No.46945/05.

Mr. N.R. Chandran, Advocate General, assisted by Mr. P. Venkatasubramanian for Mr. V.M.R. Rajendran, Additional Public Prosecutor:- For Respondent/State.

Mr.P. Rathinam, advocate for the Intervenor.

COMMON JUDGMENT

P. Sathasivam, J.

All the above Criminal Appeals and the Criminal Revision Case arise against the Common Judgment passed by the Principal Sessions Judge, Salem, in Sessions Case No. 10 of 2001, convicting 17 out of 40 accused and acquitting 23 accused.

2. Criminal Appeal Nos. 803, 863 and 871 of 2001 are by A-1, A-3, A-4, A-5, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-18, A-20, A-21, A-22 and A-40, challenging their conviction under Section 302 read with Section 34 and Sec.148 IPC, and the sentence of life imprisonment. Crl.R.C.No. 285 of 2001 has been filed by one Kumar, an injured eye witness, examined as P.W.2, and two other eye witnesses, ie., P.Ws.5 and 9, as against the acquittal of 23 accused, namely, A2, A6, A10, A16, A17, A19, A23, A24, A25, A26, A27, A28, A29, A30, A31, A32, A33, A34, A35, A36, A37, A38 and A39, from the charges levelled against each of them. Crl.M.P.No.9069 of 2005 in Crl.R.C.SR.No. 46945 of 2005 is a petition filed by P.W.2 and two others, seeking condonation of delay in filing the Revision, challenging the acquittal of A1, A3, A4, A5, A7, A8, A9, A11, A12, A13, A14, A15, A18, A20, A21, A22 and A40 from the charges levelled against them.

3. Brief summary of the prosecution case is as follows:-

A. The incident giving rise to the present case has its genesis in mid-1996 when Melavalavu Village Panchayat, previously a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

'General Constituency', was declared to be Reserved for the Scheduled Caste people. Prior to that, Melavalavu village-Panchayat was in 'General Category' and only in the year 1996, the Government of Tamil Nadu notified it as a 'Reserved Category' exclusively for the Scheduled Caste people. This change of category resulted in strained feelings between the members of the Scheduled Castes on the one hand and Ambalakarar community on the other hand in Melavalavu village. During the Panchayat Elections in the year 1996, there was some protest from Ambalakara community that SC (Scheduled Caste) people should not contest the elections. In the following incidents, some of the houses belonging to the members of the Scheduled Caste were burnt down. After conciliation, election was conducted on 31.12.1996 and a SC candidate by name Murugesan (Deceased-1) was elected as President of Melavalavu Panchayat. However, he was not able to perform his duty freely and without fear. On 30.6.1997, P.W.1 went to the Collector Office, Madurai. There, he met 1st deceased Murugesan (President), 2nd deceased Mookan (Vice President), 5th deceased Chelladurai, 3rd deceased Sevagamoorthi, P.W.12 and others. P.W.1 was informed that they came there to claim compensation for the damages caused to the houses of 3 persons by fire. Since the Collector was not available, they left P.W.12 in the office to meet the Collector and rest of them including PW-1 were returning from Madurai to their village in K.N.R. Bus. En route, in Melur, P.Ws.2 and 3 got into the bus. At that time, A1, A2, A4, A5 and A6 also boarded the same bus. When the bus reached Melavalavu Agraharam Kallukadai at about 2.45 P.M., A-2 shouted at the driver PW.14 to stop the bus, hence, he stopped the bus. At that time, all the accused, led by A.40, surrounded the bus with weapons.

B. A1 cut 1st deceased Murugesan with Veecharuval on his right shoulder saying "what for you the presidentship and the compensation". The passengers, out of fear, ran away from the bus for safety. A-1 severed the head of 1st deceased Murugesan and ran away towards west with the severed head. A-40 cut the 6th deceased Raja. A-5 cut the 5th deceased Chelladurai on his left shoulder. A-6 cut the 3rd deceased Sevagamoorthy on his right side neck and left ear. While the 2nd deceased Mookan got down from the bus and ran towards east, A-4 cut him on the backside of his neck with a Pattaknife. When the fourth deceased got down from the bus and ran towards west, A-3 cut him on his neck and hand with Pattaknife. While P.Ws.1 to 3 attempted to run away from the bus, A-16 cut PW-3 on his right cheek with Pattaknife. A-2 cut P.W.1 on his right shoulder. A-19 and A-29 cut P.W.2. The headless body of the 1st deceased and bodies of the other deceased persons were lying on the road. P.Ws.1 to 3, the injured witnesses, ran away from the scene to Melavalavu colony. P.Ws.4 to 11 are also said to have witnessed the occurrence. P.W.1 informed the villagers about the occurrence. Thereafter, P.Ws.1 to 3 went to Melur Government Hospital by Cycle. After taking first aid at Melur Hospital, all the 3 were sent to Madurai Rajaji Government Hospital for further treatment.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

C. P.W.47, Inspector of Police, Melur Police Station, on coming to know about the occurrence at 5.30 P.M. on 30.6.1997, and also about admission of the injured witnesses P.Ws.1 to 3 in Madurai Rajaji Government Hospital, proceeded to the Hospital. At 6.30 P.M., he recorded the statement of P.W.1 and, on the basis of the same, registered a case in Crime No.508 of 1997 under Sections 147, 148, 341, 307 and 302 I.P.C. and Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He sent Express F.I.R. to the Judicial Magistrate Court, Melur, went to place of occurrence at 8.20 P.M. and handed over copy of the F.I.R to P.W.50, Deputy Superintendent of Police, District Crime Branch, Madurai.

D. On instruction from the Special Cell, P.W.50-Deputy Superintendent of Police, District Crime Branch, took up investigation of the case by leading the Special Team. Observation mahazar-Ex.P-4 was prepared between 20.30 hours and 21-30 hours. Rough Sketch was prepared under Ex.P-89. M.Os.2 to 15 were recovered from the place of occurrence at 21.30 hours under mahazar-Ex.P-5. P.W.16 is the mahazar witness. Inquest over the body of D-1 was conducted by P.W.50 and Ex.P.92 is the inquest report. Ex.P.91 is the inquest report relating to the head of D-1. Inquest on D-2 was conducted by P.W.48 and the report is Ex.P-87. Inquest on D-4 was conducted by P.W.48 and the inquest report is Ex.P-88. Inquest on D-6 was conducted by P.W.45 and the inquest report is Ex.P-85. Inquest on D-3 was conducted by P.W.48 and the inquest report is Ex.P-86. During inquest, P.W.50 examined P.Ws.4, 5, 8, 9, 10 and 11. Observation mahazar regarding the bus is Ex.P-6. M.O.30-bloodstained stone was recovered from the Bus under mahazar Ex.P-93. P.W.50 examined P.Ws.13, 16 and 17 and went to Government Hospital, Madurai, where he examined P.Ws.1 to 3, the injured witnesses on 01-7-1997.

E. P.W.21-Dr.Meyyalagan, attached to the Government Hospital, Madurai, conducted post-mortem on the dead bodies of D-6, D-1, D-4 and D-5 on 01-7-97. Exs. P-35, 37, 39 and 41 are the post-mortem certificates issued by him in respect of the above deceased. P.W.22-Dr.Maharani attached to the Government Hospital, Madurai, conducted post-mortem on the dead bodies of D-3 and D-2 on 1-7-1997. Exs.P-43 and P-45 are the respective post-mortem certificates.

F. On 01.07.1997, at 2-30 P.M., P.W.50 arrested A-20, A-22, A-23, A-25, A-26, A-27 and A-39 and, in pursuance of their statements, M.Os.1, 31, 32, 33 and 34 were recovered from the accused. He arrested A-28 on 3.7.97 at 00.30 hours and recovered Aruval-M.O.35 and M.O.36 from him. On 12.7.97, at 10.30 A.M., he arrested A-7, A-17, A-29 and, in pursuance of their statements, recovered M.Os.37, 38 and 39. A-13 was arrested on 13-7-97 at Anna Bus Stand, Madurai. On 21-7-97, A-1 and A-10 surrendered before Judicial Magistrate, Kulithalai. On 4-8-1997, P.W.50 arrested A-16, A-30 & A-31 and recovered M.Os. 40, 41 & 42. On 4-8-1997, A-11 and A-12 surrendered before the Judicial

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Magistrate, Sivagangai, and M.Os. 43 and 44 were recovered on 13-8-1997. On 14-8-1997, A-32, A-38 and Jayaraman (died) surrendered before the Judicial Magistrate, Sivagangai, and, in pursuance of their statement, M.Os.45, 46, 47 and 48 were recovered on 20-8-97. P.W.50 arrested A-8, A-14, A-35 and one Vadivelu on 25-8-1997 and recovered weapons-M.Os.49, 50 and 51 in pursuance of their statements. A-3 surrendered before Judicial Magistrate, Sivagangai, on 18-8-97. P.W.50 recovered Aruval (M.O.52) from him. A-33 was arrested on 28-8-1997 at 18-30 hours and M.O.53 knife was recovered from him. A-36 was arrested on 01-9-1997 at 14.00 hours and M.O.54 aruval was recovered from him. A-2 surrendered before the Judicial Magistrate, Dindigul on 26-8-97. P.W.50 recovered M.O.55 pattaknife from A-2 on 3-9-97 at 15.20 hours. He arrested A-6 on 4-10-97 at Naithampativilakku. P.W.6-Head Constable, Melur Police Station, arrested A-40r on 23-10-2000.

G. After getting the chemical examination report-Ex.P-51, Serologist report-Ex.P-52 and completing the investigation, P.W.50 filed charge sheet on 25-9-1997.

4. The prosecution examined P.Ws.1 to 50, marked Exs. P-1 to P-121 and produced M.Os.1 to 55. On the side of the defence, 2 witnesses were examined as D.Ws.1 and 2 and Exs. D-1 to D-19 were marked.

5. When questioned under Section 313 Cr.P.C., the accused denied having any complicity in the commission of the crime and also pleaded innocence.

6. The learned Principal Sessions Judge, Salem, on appreciation of the evidence, both oral and documentary, convicted 17 out of 40 accused under Section 302 read with Sec.34 IPC and Section 148 IPC and sentenced them to undergo life imprisonment, and acquitted the remaining 23 accused of all the charges. Questioning the conviction and sentence, the Criminal Appeals have been filed; and aggrieved by the acquittal of 23 accused, the injured witnesses filed the Criminal Revision Case. However, the State has not preferred appeal against the acquittal of some of the accused.

7. Heard Mr. B. Sriramulu, learned Senior Counsel for appellants in Criminal Appeal No. 803/2001; Mr. S. Ashok Kumar, learned Senior Counsel for appellants in Criminal Appeal No. 863/2001, for appellant in Criminal Appeal No. 871/2001; Mr. M. Balasubramanian for appellant in Criminal Appeal No. 871/2001; Mr. V. Gopinath, learned senior counsel for petitioner in Crl.R.C.No. 285/2002; Mr. P. Rathinam, for petitioner in Crl.M.P. No.9069/05 in Crl.R.C. No.46495/2005; and Mr.N.R.Chandran, learned Advocate General for Respondent/State.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. The points for consideration in the Criminal Appeals are:

i) Whether the prosecution has proved the charges framed against Accused 1, 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, 15, 18, 20, 21, 22 and 40?.

ii) Whether the learned Sessions Judge was right in convicting those accused under Section 302 read with 34 IPC and imposing life imprisonment on them?;

The only point that arises for consideration in the Criminal Revision case is,

Whether the finding of the trial Court in acquitting the rest of the accused is correct/justified or any interference is called for?

9. Before proceeding to consider the arguments advanced on either side, it is pertinent to note that in the post mortem certificates issued by the Doctors, they opined that the deceased persons would appear to have died of shock and haemorrhage due to multiple injuries. In respect of deceased Murugesan, the opinion is that he would appear to have died of shock and haemorrhage due to multiple injuries including the decapitation injury. That being so, this Court has no difficulty to come to the conclusion that the deceased died of homicidal violence.

10. The following points have been urged by the learned Senior Counsel appearing for the appellants:

i) The origin and genesis of the occurrence was not brought out in the F.I.R and the original F.I.R, which came into existence at the earliest point of time, was suppressed by the prosecution to suit their convenience. For that purpose, the learned Senior Counsel relied upon Ex. D-19, the Report of the Collector to the Chief Minister, wherein, it is stated that as per the complaint of P.W.1, a case was registered in Crime No. 508/1997, on the file of Melur Police Station, under Sections 147, 148, 324, 307 and 302 I.P.C. read with Section 3 (1) and (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, against Duraipandi, Ambalam and 14 known persons. The said Report is dated 30-06-1997. They also relied on Ex.D.13, Report of the Tahsildar to the District Collector as well as Ex. D-1, an affidavit filed by P.W.1 before the High Court in a Writ Petition. In the said affidavit, at paragraph No.4, P.W.1 stated about the role of A-2 and others in the crime. In para 5, it is stated that one Kannan chopped the head of Murugesan. Pointing out the above

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

aspects, the learned Senior Counsel would argue that the original F.I.R., which contains the truthful events, was suppressed and that, for the reasons best known to the police, all the appellants herein were roped in.

ii) Secondly, by relying upon the evidence of P.W.47, it is contended that the case was not immediately registered and that even though the court and the police station are in the same area, there was a delay of three hours in forwarding the F.I.R. to the Magistrate, which is fatal to the prosecution case. They also referred to the serial numbers in the F.I.R book and contended that, in the absence of a particular order in which the related events should follow each other in the F.I.R., it leads to a presumption that the original F.I.R. had been suppressed. Even though they asked for the F.I.R book, the same was not produced before the Court. According to them, all these aspects would go to show that the prosecution did not come forward with the truth, hence, the benefit of doubt should be given to the appellants/accused and they should be acquitted.

iii) Thirdly, it is contended that when PWs-1 to 3 turned hostile and when there are contradictions between the evidence of the alleged eye witnesses, the trial court should not have considered their evidence to convict the accused.

iv) Fourthly, it is argued that since the witnesses to the recovery turned hostile, the recovery made by the police could not be believed.

v) Fifthly, it is pointed out that for some of the accused, only one witness speaks to about the overt act. In a case of this kind, the evidence of a single witness will not be enough to base the conviction.

11. Mr. N.R.Chandran, learned Advocate General, appearing for the State met all the contentions by placing relevant materials. Mr.V.Gopinath, learned Senior Counsel and Mr.Rathinam, appearing for the Revision Petitioners insisted that the matter has to be remitted back to the trial court for fresh consideration of evidence in so far as the acquitted accused.

12. Before going into the contentions raised by the learned counsel for the appellants, let us ascertain as to whether the prosecution has established 'motive' for the occurrence. The prosecution party belongs to Adi-Dravida community and the accused party belongs to Ambalakarar community. Often, there used to be skirmish and disputes between these two communities even for trivial

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

matters. One such contentious issue was the contest in the election to the post of Village Panchayat President, Melavalavu, after Government of Tamil Nadu declared Melavalavu as a reserved constituency in the year 1996. Enraged by this declaration, the Ambalakarar community warned that no Adi-Dravida/Dalit candidate should contest in the Panchayat elections. Till 1996, A-1 was the President of the Panchayat. After it became a reserved constituency and when Panchayat elections were announced, no one filed nomination from the Adi-Dravida community for the post of President fearing reprisal at the hands of the people belonging to Ambalakarar community. Elections were announced for the second time. Government assured the prospective candidates from Adi-Dravida community that protection would be given and, based on such promise, Murugesan (D1) filed his nomination for the post of Village President. Infuriated by the action of the deceased, some miscreants set fire to the houses of few people belong to Adi-Dravida community and consequently the elections were again postponed. Thereupon, elections were announced for the third time. This time also, the deceased filed his nomination. He was also given sufficient protection. Initially, the elections went on smoothly, but later, there was an ugly turn when people belonging to Ambalakarar and Kallar communities seized the ballot boxes, because of which, the counting of votes could not be done and the elections were cancelled. Thereafter, elections were announced for the fourth time in this caste-dominated village. This time too, the deceased (D1) filed his nomination and he won the election. Even though he took oath, he could not occupy the post of Panchayat President in view of the stiff opposition from communities other than those belong to Adi-Dravida community. They were also angry, because, in the ballot box seizure case, two persons, viz., A-3 & A-21, were convicted.

13. The finding of the trial Court that there was no prior motive or intention to commit the offence is controverted by the evidence let in by the prosecution. It is the evidence of P.W.1 that A-8 Manoharan was in the Collector Office, Madurai, when Murugesan (D1) and others came to meet the Collector. A-1, A-2, A-4, A-5 and A-6 got into the bus at Melur in which the deceased and P.Ws.1 to 3 were travelling. When the Bus reached Melavalavu Agraharam Kallukadai, A-2 shouted at the driver to stop the bus. When the bus was stopped, all the accused under the leadership of A-40 armed with weapons, surrounded the bus. They attacked D-1, the President; D-2, the Vice President; other deceased persons and the injured witnesses, all belong to the Scheduled Caste. The above sequence of events unequivocally establish that it is a premeditated and pre-planned attack on the unarmed victims. P.W.50, the Investigating Officer, clearly stated that of the 40 accused, A-5, A-6, A-19, A-25, A-26, A-28, A-30 and A-40 were from surrounding villages and they belong to Ambalakarar community. All of them were armed with weapons as the other accused were. Thus, it is very clear that the incident arose as a sequel to the reservation of the Panchayat exclusively for members of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Scheduled Caste and that the hostility of the other communities towards the SC candidates contesting in the elections was not confined to Melavalavu alone. The fact that so many accused from other surrounding villages had come armed with weapons, targeting the S.C President and other elders, clearly shows that the entire attack was pre-planned, premeditated and targeted at SCs. It is to be noted that the bus was plying over the route, covering a long distance. However, the bus was stopped at the instance of A-2 at an unscheduled place and it was surrounded immediately by the armed accused. From this, it is apparent that A-2 was clear and successful in executing a part of their plan, that is, to stop the bus. These clear sequence of events unerringly points towards the pre-planned nature of the attack. Added to this, P.Ws.14 and 13, the bus driver and conductor respectively, though turned hostile, have clearly testified that the stopping was indeed unscheduled and that the occurrence had taken place at the time, date and place as put forward by the prosecution, thus, supporting the prosecution version on this aspect. In Ex.D-19, which is a report of the District Collector, Madurai, sent to the Chief Minister, Fort St. George, Chennai-9, it is stated that the election dispute was the motive for the occurrence. In view of the abundant materials available on record, while disagreeing with the learned Sessions Judge, we hold that the prosecution has established the motive for the occurrence.

14. Coming to the contention relating to suppression of the original F.I.R, which came into existence at the earliest point of time, Mr. B. Sriramulu, learned Senior Counsel for some of the appellants, heavily relied on Ex. D-19, which is a report of the Collector to the Chief Minister. It is true that in the said report, it is stated that, on the complaint of P.W.1, a case was registered in Crime No. 508/97 under Sections 147, 148, 324, 307 and 302 I.P.C. and Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, against Markandan, Ambalam and 14 known persons. Learned Senior counsel has also relied on Ex. D-13, report of the Tahsildar to the District Collector. He further relied upon Ex. D-1, an affidavit of P.W.1 filed before this Court in a writ proceeding (WP.273 of 1999) wherein, P.W.1 stated that one Kannan severed the head of Murugesan. By pointing out the above said aspects, the learned Senior counsel contended that the original F.I.R., which contains the truthful events, was suppressed and due to the reasons best known to the police, the appellants herein were roped in. He also contended that non-production of the original F.I.R. by the prosecution would amply prove that the prosecution suppressed the genesis of the occurrence, which fatally affects the prosecution story.

15. Regarding the report of the Collector i.e., Ex. D-19, it is seen that the same was sent to the Chief Minister on the same day on the basis of the earliest information received. The Collector, being the Administrative Head of the District, is expected to brief the Government then and there and without further loss of time,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

particularly in a case of this nature where people belonging to upper caste unleashed brutal violence against an oppressed class of people by beheading and murdering their elders. Only after thorough investigation by visiting the place of occurrence, examining the persons who witnessed the occurrence, etc., it would be possible for the investigating agency to arrive at a clear-cut decision, hence, Ex.D-19 cannot be taken as a basis for the prosecution case, at the most, it can be treated as the earliest information/Report to the Government. In this regard, evidence of the eye witnesses, which we are going to discuss here-under, would be relevant. P.W.47, in his cross-examination by A-1 and others, gave explanation for such type of registration and some of the discrepancies in the F.I.R. The explanation offered is reasonable and the same cannot be doubted. As rightly pointed out, when the entire village was under the grip of fear on account of 6 murders, that too between two communities in the same village, it cannot be said that the Investigating Officer was sitting idle in doing the investigation systematically and as per rules. He has to see the criticality of the situation and act suitably. Sensing the same, P.W.47 acted diligently and quickly, hence, the way in which the F.I.R. was registered cannot be termed as illegal. At the most, the discrepancy pointed out may be an irregularity by the officer, who conducted the investigation, but it is not an illegality. Such irregularity by itself cannot shake the foundation of the prosecution case. Accordingly, based on Ex. D-19, the whole investigation cannot be said to be faulty, because, it is the formal report sent by the officials to the higher authority. We are satisfied that Exs. D-19 and D-13 would in no way affect the prosecution case.

16. It is relevant to note that P.W.1, though at a later point of time turned hostile, had not denied the contents and his signature in Ex. P-1, which is the complaint relating to the incident. Ex. P-1 reached the Court within two hours of registration of the case, hence, there is no ground to disbelieve it. It will be useful in this context to refer to the judgment of the Supreme Court in State of Karnataka v. K. Yarappa Reddy, (1999) 8 S.C.C. 715, at page 720:

> " 19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-high settled that even if the investigation is

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case."

17. In Nirmal Singh v. State of Bihar (2005) 9 SCC 725, the defence raised doubts about the F.I.R and the nature of the prosecution case. After an elaborate discussion of the evidence, the Supreme Court held, at para 19, page 732:

"... we do not feel persuaded to discard the case of the prosecution only on account of some infirmities which we have noticed earlier. There appears to be no reason why so many eye witnesses should falsely implicate the appellants, and there is in fact, nothing on record to suggest that the witnesses had any reason to falsely implicate them."

18. In Sanganagouda A. Veeranagouda v. State of Karnataka (2005) 12 SCC 468, the Supreme Court held that when the evidence of an eye witness (PW1 in that case) is clear, non-production of the complaint said to have been lodged by him before the Assistant Commissioner prior to the F.I.R is inconsequential.

19. In the present case too, evidence of the eye witnesses including the injured eye witnesses is well supported and corroborated by other evidence. As discussed above, the entire evidence cannot be discarded or ignored for the reason that the F.I.R book was not produced or there is a doubt regarding the names of the accused in Ex. P-1 and other documents. Where the evidence of witnesses is otherwise natural, reliable and corroborates one another, the same can be accepted as a whole to arrive at a conclusion that the prosecution has established its case.

20. It is also brought to our notice that the practice of calling for case diaries and C.D. entries for the purpose of cross-examination was prohibited by the Hon'ble Supreme Court in various decisions. Accordingly, it is not open to the defence to call for those documents as they are meant only to set the law in motion.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

21. Now, let us consider the allegation relating to the delay in not registering the case immediately and sending the F.I.R after 3 hours when the Court is in the same area. It is the main contention of the appellants that, though most of the eye witnesses and other witnesses for seizure, arrest etc., turned hostile, irrespective of the same, the trial Judge accepted the case of the prosecution to some extent and on that basis convicted the appellants/accused. In this context, let us consider the questions relating to:

(a) reliance placed on the evidence of some of the eye witnesses; and

(b) treating some of the eye/injured witnesses as hostile and rejecting their evidence.

22. On 30-6-1997, Murugesan (D1), accompanied by Mookan, Chelladurai, Sevagamoorthi, Nithyanandam, Pandiammal and Kanchivannan, went to the Collector's office at Madurai. When Murugesan (D-1) saw P.W.1, he told him that he had come there to ask compensation for the three persons, who suffered loss as their houses were burnt down at the time of the elections. When all of them went inside the Collector's office, the Collector was not available, hence, they left behind PW-12 Kanchivannan at the Collector's office and others decided to return to the village. When they were about to return, Manoharan (A8) saw them and asked one Nithyanandam as to when they would return to the village, for which, the said Nithyanandam told that they are going in K.N.R bus. Immediately A-8 went towards the telephone booth. Murugesan (D-1) and other persons boarded the K.N.R bus. When the bus reached Melur, two other persons, namely, Kumar, P.W.2 and Chinnaiah, P.W.3, belonging to the Adi-Dravida community, boarded the bus. At that time, A-1 (Alagarsamy), A-2 (Durai Pandi), A-5 (Manikandan), A-4 (Jothi) and A-6 (Manivasagam) also boarded the same bus. P.W.1 identified all the above named 5 accused in the Court. At about 2.45 P.M., when the bus reached Agraharam Kallukadai, A-2 threatened the driver to stop the bus and the bus was stopped. A-40, along with other accused, all belonging to Ambalakarar community, surrounded the bus. A-1 cut Murugesan (D1) telling him as to why they want compensation and further cut him on the right shoulder. The passengers in the bus, out of fear, ran helter-skelter for their lives. A-1 severed the head of deceased Murugesan and took it away. A-40 (Ramar) cut deceased Raja. A-5 Manikandan cut deceased Chelladurai. A-6 (Manivasagam) cut deceased Sevagamoorthy on the right side of the neck and left ear. When the Vice-President Mookan tried to escape, A-4 (Jothi) cut him on the back side of his neck with a pattaknife. This gruesome incident was seen by P.W.1 while he was standing in the bus. When deceased Bhoopathy tried to escape, A-3 (Ponnaiah) cut him on his legs and hands and when P.W.1 also tried to escape, he too was cut. A-16 (Karanthamalai) cut Chinnaiah on the left cheek. A-2 (Durai Pandi) cut P.W.1 on the right shoulder. A-19 (Tamilan) and A-29 (Ashokan) cut P.W.2 Kumar. The headless body of Murugesan was found lying on the road along with the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

bodies of other deceased. P.W.1, on seeing this scene, ran away from the occurrence place to his colony out of fear. In the colony, he found P.Ws.3 and 2, Chinnaiah and Kumar. They explained the incident to the other residents of the colony and as per the advice of the villagers, they went to the Melur Government Hospital by cycle through a short-cut route. In the Melur hospital, they were given first aid and thereafter, sent to the Government Rajaji Hospital at Madurai by car. They were admitted in the Hospital for about one week as in-patients. After their admission, P.W.47 Inspector of Police, Melur Police Station, visited the hospital and recorded the statement of P.W.1. The statement was read over and explained to P.W.1, who accepted its correctness and signed the same. P.W.1 also identified M.O.1 Veecharuval, which was used by A-1 and also the patta knife used by A-2. He further stated that one Karuppan, Kalayani, Mayavar and Periyavar also witnessed the occurrence. Since all of them were threatened by the accused they did not come out immediately to speak about the incident. They are P.Ws.5, 9, 10 and 11.

23. P.W.2, Kumar, corroborated the statement of P.W.1. As far as the overt acts are concerned, A-40 surrounded the bus with other accused. He further repeated that A-1 asked Murugesan (deceased-1) as "why are you after posts" and so saying cut the head, severed it and ran away towards west, followed by other accused. He also stated that A-19 (Tamilan) and A-27 (Sevagaperumal), cut his (P.W.2's) left middle finger, right hand and on the back side of the neck. Somehow, he and P.W.3 escaped and ran towards their colony. P.W.1 Krishnan also came there and all the 3 of them went to the hospital by cycle and they were later taken to Rajaji Government Hospital at Madurai, where they underwent treatment for about one week as in-patients.

24. P.W.3, Chinnaiah, is also an injured witness like P.Ws.1 and 2. He corroborates the evidence of P.W.1 and P.W.2 as far as the occurrence is concerned. Regarding the overt acts, according to him, A-1 (Alagsrsamy) cut Murugesan indiscriminately. When P.W.3 Chinnaiah tried to escape, A-16 (Karanthamalai) cut on his right cheek. A-19 and A-27 cut P.W.2 Kumar and A-24 and A-6 cut deceased Sevagamoorthy. When P.W.3 went to his colony, he saw P.W.2 there with injuries and, at that time, P.W.1 Krishnan also came there. All the three went to Melur Government Hospital by cycle and after first aid, they were sent to the Government Hospital at Madurai, where, they were admitted as in-patient for about a week. On the same day, P.W.47, Inspector of Police, Melur Police Station, came there and examined P.W.1, P.W.3 and others.

25. P.W.23 is Dr. Venkatachalam. On 30-6-1997, while he was on duty as Assistant Duty Officer, Casualty Ward, P.W.3 came to him at about 4.50 p.m. for treatment. He examined him. P.W.3 has stated that he was attacked by one known person on 30-6-1997 at about 3.15 p.m. He

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

found two injuries on him and issued Ex.P-46-wound certificate.

26. P.W.1 Krishnan came to P.W.23 for treatment and informed that he was attacked by about 40 known persons at about 3.15 p.m. and P.W.23 found an injury, for which he issued a wound certificate, which is marked as Ex. P-47.

27. On the same day, at about 5 p.m., P.W.2 came to P.W.23 for treatment. P.W.2 stated that he was attacked by about 20 to 30 persons at about 3.15 p.m. P.W.23 issued a wound certificate, which is marked as Ex. P-48.

28. As rightly pointed out, the evidence of P.W.1 cannot be rejected in toto. Though he was examined in chief on 2-4-2001, he was cross-examined only on 26-6-2001. In the chief examination, P.W.1 has narrated the entire sequence of the occurrence right from its inception. The original idea of committing the murder could be seen from the evidence of P.W.1 which started on 30.6.1997 at the Collector's Office, Madurai, where A-8 asked Nithyanandam as to when the deceased and others would return to their village and after collecting the details, he rushed towards the telephone booth. It is not in dispute that on 2-4-2001, P.W.1 was cross-examined by 3 defence counsel. The same was recorded and it runs to about 15 pages. During that time, nothing was brought out by the defence to dispute the evidence of P.W.1. On the contrary, he was recalled on 26-6-2001, i.e., after 2 ½ months, and only at that time, he was treated as hostile witness. There is every likelihood of his being won over by the defence during this period of 2 ½ months and to answer this, the defence is relying upon Ex. D-1, which is an affidavit filed by P.W.1 in a writ petition filed before this Court, wherein, he had stated that he has fear of the prosecution party. It cannot be accepted, because, the affidavit/Ex.D-1 came to be filed only on 6.1.1999, whereas, the occurrence had taken place on 30.6.1997, that is, about 1 ½ years after the occurrence. Hence, it is apparent that only at the behest of the defence, PW-1 had made such statement in the affidavit. It clearly shows that the accused party had threatened P.W.1 and obtained this affidavit. At the time of cross-examination of P.W.1 by the defence on 2-4-2001, he stated that he was taken forcibly and his signature was obtained under threat. He denied the suggestion that he filed the affidavit stating that he has given false names in the F.I.R. He also narrated about the circumstances under which he came to file the affidavit before this Court when he was cross-examined by A-2 and others on 2-4-2001. He denied the suggestion put forward by the defence counsel on behalf of A-7 and others that due to fear of Viduthalai Cheerithai, he is deposing against the accused. If the personal defence is correct that he filed the affidavit on his own, he would have come forward to depose both in the chief as well as cross examination about the details of the prosecution case in favour of the prosecution. Moreover P.W.1 is an injured witness, who travelled in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the bus right from the inception of the occurrence and his presence at the scene of occurrence cannot be doubted.

29. The Hon'ble Supreme Court has held in various cases that merely because a witness is declared hostile, his entire evidence does not get excluded or rendered unworthy of consideration. One such is the case reported in 1989 SCC (Crl) 388 (State of U.P. v. Chet Ram). The Court should see the reality of the situation and come to rescue to do justice.

30. It is useful to refer the principles laid down by the Supreme Court in assessing the evidence tendered by witnesses, who later become hostile. In Khujji v. State of M.P., 1991 (3) SCC 627, the Supreme Court declared thus:

> " 6. ... It seems to be well settled by the decisions of this Court – Bhagwan Singh v. State of Haryana (1976 (1) SCC 389), Rabindra Kumar Dey v. State of Orissa (AIR 1977 SC 170) and Syad Akbar v. State of Karnataka ((1980) 1 SCC 30) -- that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof."

Examining the evidence on record, the Supreme Court further held:

> "It is true that the first information report is not substantive evidence but the fact remains that immediately after the incident and before there was any extraneous intervention, P.W.4 went to the police station and narrated the incident. The first information report is a detailed document and it is not possible to believe that the investigating officer imagined those details and prepared the document Ex.P-3. The detailed narration about the incident in the first information report goes to show that the subsequent attempt of P.W.4 to disown the document, while admitting his signature thereon, is a shift for reasons best known to P.W.4. We are, therefore, not prepared to accept the criticism that the version regarding the incident is the result of some fertile thinking on the part of the investigating officer. We are satisfied, beyond any manner of doubt, that P.W.4 had gone to the police station and had lodged the first information report. ... "

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

As pointed out earlier, P.W.1 in the present case had also not denied his signature in Ex.P-1. Ex.P-1 reached the court within 2 hours, hence, there is no ground to disbelieve it. Thus, taken altogether, merely because P.W.1 and P.W.3 turned hostile after being recalled, their evidence cannot be completely effaced and ignored, especially where there is otherwise credible, reliable and corroborative evidence available on record.

31. Thus, it is a settled position in law, as on date, that if a witness turns hostile, the Court need not close its eyes to the entirety of the evidence of the hostile witness and the Court has a right to probe further and find out whether there is any legal material, which can be taken into account. In the Judgment of the Supreme Court reported in 1991 SCC Crl. 916 (Khujji v. State of M.P.), an occasion had arisen to decide as to whether once a witness is treated as hostile and cross examined by the State, should the evidence of such witness be completely exonerated from consideration? The facts in that case in the relevant context is that the evidence of PWs.3 and 4 were rejected by the trial court because they were declared as hostile, since they refused to identify the culprits as the assailants of the deceased. Following the earlier judgments reported in (1976) 1 SCC 389 (Bhagwan Singh vs. State of Haryana); (1976) 4 SCC 233 (Rabindra Kumar Dey vs. State of Orissa) and (1980) 1 SCC 30 (Syed Akbar vs. State of Karnataka), the Supreme Court went on to lay down the law as hereunder:-

> " ... that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examine him. The evidence of such witnesses cannot be accepted to the extent their version is found to be dependable on a careful scrutiny thereof. In the present case, the evidence of the aforesaid two eye witnesses was challenged by the prosecution in cross examination because they refused to name the accused in the dock as the assailants of the deceased. We are in agreement with the submission of the learned counsel for the State that the trial court made no effort to scrutinise the evidence of these two witnesses even in regard to the factum of the incident. "

32. Following the above ratio laid down by the Supreme Court, it has to be seen as to whether the conclusion of the learned Sessions Judge that since PWs-1 to 3 turned hostile, their evidence lacks credibility and is useless; is legally tenable or not. The learned Sessions Judge did not take into account as to why the witnesses, who all along supported the prosecution case, when recalled after a period of 85 days, ie., after all prosecution witnesses had been examined, took a sudden reverse and turned hostile. It is apparent that they have thus been won over by the defence. All these issues were not properly

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

considered by the trial Court. We deem it appropriate to point out here that the Court has onerous duty to find out as to where exactly lies the truth. The Court can safely presume that during the time that had elapsed between the recording of the evidence of the witness on the first occasion and further cross examination, after the witness was recalled, much water could have been flown under the bridge and it is not possible to totally ignore the chance of the witness being brought under terror or panic.

33. The evidence of P.Ws.6 and 7 was rejected by the trial Court mainly on the ground that they were examined 35 days after the occurrence. The explanation given by P.W.6 and P.W.7 is that they were frightened and, out of fear, they did not immediately disclose as to what they had seen. In fact P.W.7 states that he felt faint when he reached home and lay down; after 5 minutes, when he felt better and came out of the house, he saw his community people frightened and tense. The nature of the occurrence, the brutal manner in which 6 persons were attacked/killed; one of the deceased's head was severed; and three persons were attacked, resulting in injuries; would show that the circumstances were such that the witnesses must have been emotionally traumatized and terrified. It would have taken several days for them to come out of the shock. It may be useful to refer to the evidence of P.W.7 at page 79, wherein, he refers to the occurrence place as a "battlefield" and states that he would also have been attacked if the accused knew his identity. Hence, out of fear, P.W.7 informed only his mother and did not tell anyone else. It is not as though the prosecution only relies on the evidence of P.Ws.6 and 7. There are other eye witnesses also and their evidence is corroborated by P.Ws.6 and 7. If the prosecution depends only on the evidence of PWs.6 and 7, then, it may not be safe to rely exclusively on their evidence to convict the accused. However, this is a case where there are other independent witnesses to speak about the occurrence.

34. Mere delay in examining the witness is not a ground to reject the evidence of P.Ws.6 and 7 especially when their evidence is otherwise believable, natural and infuses confidence. This is clear from the judgment of the Supreme Court in Ganeshlal v. State of Maharashtra, (1992) 3 SCC 106, wherein, it is stated as follows:

> " 10. ... It is true that there was a delay of nearly 2-1/2 months in recording his statement but it goes explained as the investigation did not proceed in the desired lines initially and only after P.W.16 took over the investigation, he recorded the statement of P.W.6. The dispensary used to open by 10.00 a.m. and his presence is natural. He has no axe to grind against the appellant or any of the members of his family. He is also an independent witness.... So P.W.6 being a natural witness his evidence cannot be doubted due to delay. It is true that this Court

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

in Balakrushna Swain v. State of Orissa, held that the evidence of witness recorded at late stage must be received with a pinch of salt. Delay defeats justice. But each case has to be considered on its own facts. In view of the above facts we have scanned his evidence carefully. We are satisfied that he is a truthful witness. The High Court is well justified in placing reliance on his evidence. In fact material part of his evidence was not subjected to cross-examination, except suggesting that he was deposing falsely. Under these circumstances he is a truthful and reliable witness. ...."

35. In the present case, the evidence tendered by P.Ws.6 and 7 is natural, believable and corroborated by other evidence. It is important to point out at this juncture that it is not as if the prosecution relies solely on the evidence of P.Ws.6 and 7 to prove their case. Even if their evidence is ignored, there is other credible and reliable evidence to prove the case against the accused persons. The evidence of P.Ws.6 and 7 thus only add to the corpus of evidence put forward by the prosecution. Further, there is ample corroboration to the evidence of P.Ws.6 and 7. In view of these circumstances, the conclusion of the trial court that P.W.6, Palani was procured at a later stage and he is not trustworthy and that P.W.7, Ganesan has been belatedly procured and his evidence is artificial and unbelievable; is legally unsustainable and unsound.

36. The trial Court ought not to have accepted the plea of alibi set up by A-27. The accused takes recourse to a defence line that when the occurrence took place, he was far away from the place of occurrence, hence, it is extremely improbable that he would have participated in the crime. When an accused takes such a stand, it is his duty to prove with absolute certainty the plea of alibi so as to exclude the possibility of his presence at the place of the occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally, the court is slow to believe any counter evidence to the effect that he was elsewhere when the occurrence took place.

37. The Court below erred in relying on the evidence of P.W.15, who, during investigation, had stated that, on 30.6.1997, A-27 left the office at 2.00 p.m. and did not return to the office till 4.9.1997. In evidence, he states that he (A-27) was in the office till 5.00 p.m. on 30.06.1997, which is contrary to his earlier version. Exs. D-4 and D-5 are self serving documents and no reliance can be placed on them. P.W.15 says that he brought those records on his own accord to the court. He did not sign anywhere in Ex.D-5. Ex.D-4 was in the custody of the Secretary, i.e., A-27. Ex.D-4 only shows that A-27 attended the office on 30-6-1997. D.W.1 admits that he did not sign in Ex. D-5 and there is no necessity to show the contents of D5 to him

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(D.W.1) as no one can question the Secretary about his leaving the office. The accounts which were written on 30-6-1997 were not sent on the same day. The presence of A-27 is clearly spoken by P.Ws.2 and 3 and both of them allege that A-27 attacked P.W.2. His name is also mentioned in Ex. P-1 which had come into existence at the earliest point of time and reached the Magistrate on the same night. The defence has failed to prove the plea of alibi while on the other hand, the prosecution has proved the presence of A-27 at the scene through the evidence of P.Ws.2 and 3 and Ex. P-1.

38. In the present case there is overwhelming evidence of several witnesses to establish the presence of A-27 at the occurrence site. In fact, P.W.3-injured eye witness, convincingly testified that he saw A-27 cutting P.W.2, which version is also supported by the injuries noted in the medical certificate. Thus, the finding of the trial Court regarding the role of A-27 and placing reliance on the alibi evidence are legally unsustainable and wrong.

39. The prosecution has clearly established the case, attracting the ingredients of Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. This can be seen in the context in which the entire incident occurred. Originally, Melavalavu village Panchayat was a general constituency. In 1996, the Panchayat was declared to be reserved for the SCs. Prior to 1996, A1 was the President of the Panchayat. The declaration was not liked by the Ambalakarar community. They did not want a member of the Scheduled Caste community to become the President of their village Panchayat and made efforts to prevent Scheduled Caste candidates from becoming the Panchayat President and tried to make it a general constituency again. P.Ws.1, 47 and 49 depose about the events that followed in Melavalavu subsequent to the change in the nature of constituency, culminating in the gruesome and brutal beheading of D-1-Murugesan and murder of 5 other Scheduled Caste people. Their evidence would further show that when elections to the Melavalavu Panchayat were announced to be conducted, initially calling for nominations to be filed by Scheduled Caste candidates for Panchayat President post, due to the unilateral decision of the Ambalakarar community that no Dalit should stand for election and threat, the Dalits refrained from contesting the elections.

40. According to P.W.1, due to the persuasion of Governmental officials, the Dalits were encouraged to file nominations for the elections to be held on 9-10-1996. Thereafter, some Dalits including D-1, Murugesan, D-2 Bhoopathy and one Vaiyamkaruppan filed nominations. After the Dalits decided to contest the elections, houses of D3 Sevagamurthy, P.W.12 Kancheevanam and one Pandiammal were burnt down. Due to fear, the Dalit candidates withdrew their nominations, which led to postponement of the elections. On 10-12-1996, the election dates were announced for the panchayat after it was made a reserve

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

constituency. D1, D3 and one Karuppan withdrew their nominations. Therefore, the elections were cancelled. On 28-12-1996, dates for the elections were announced for the second time. D-1 along with seven others filed their nominations for the post of President. On the same day, there was rioting and booth capturing in four places by the persons belonging to Ambalakarar and Kallar community and the perpetrators (A3 and A21) were found guilty and punished. Thereafter, election was postponed and scheduled to be held again on 31-12-1996. On that date, elections were held as scheduled and the same was contested by D1 and seven others. The deceased Murugesan won the election and D2-Mookan was elected as Vice President. Deceased Murugesan was restrained from entering the panchayat office after the swearing in ceremony and the members of the Ambalakarar community did not allow deceased Murugesan to function as the President of the Panchayat and fulfil his official duties. It is in the background of violence-soaked history, filled with caste bitterness and hostility, the occurrence leading to the beheading of D1 Murugesan and murder of 5 others took place.

41. The evidence is clear that it was in order to terrorise the Dalit community and prevent them from contesting elections, they were attacked by the accused party and it occurred solely because they belong to a particular community. What needs to be stressed is that both the Panchayat President and the Vice-President were specifically targeted and killed. Additionally, the other deceased also belong to the SC community. That apart, the injured witnesses are also from the same community. They are all members of the Scheduled Caste and because they happened to be Dalits, they were targeted. The pre-planned nature of the attack and the sheer brutality of the murders was also clearly meant to terrorise the SC community and to show it as a lesson as to what would happen to them if they decide to contest the elections in future also. Hence, it is clear that what the Ambalakarars could not achieve legally, they sought to achieve it by resorting to violence and taking law into their own hands. Even according to the defence, there is no other personal enmity for attacking the victims. Hence, the only reason for the attack on the victims is that they belong to the Scheduled Caste and no other reason has even been suggested by the defence. It is the clear case, in which, atrocities were committed on the Scheduled Caste People, which would attract the ingredients of Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The judgement of the trial court suffers from non-application of mind and the trial court failed to take into consideration the reliable testimony and the material evidence on record. Again, as rightly pointed out, the act of the accused was not merely to murder the deceased but also to terrorise the entire Scheduled Caste community from daring to stand for Panchayat elections.

42. Further, P.Ws.5, 8, 9 and 10 also corroborate the evidence of P.Ws.1 to 3 and the reasons given by them for being at that

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

time at the place of occurrence are convincing, hence, they cannot be said to be stock witnesses. Further, the reasons for being present at the place of occurrence have been clearly deposed by them and nothing has been done by the defence to prove that they could not have been present at the time of occurrence by confronting the witnesses with suggestions, questions etc. in the manner known to them. For the reasons adduced by them, they cannot be faulted for not informing the Police immediately, because the situation was tense, panic, and volatile and they were threatened by the accused. They have been throughout consistent in their evidence. The normal trend of any human being in such a situation is to run away from the place. In view of the reality of the situation and uniformity of the statement of the witnesses, their evidence cannot be thrown out or brushed aside. These 4 independent witnesses corroborate the evidence of P.Ws.1 to 3, hence, the attack of the defence that P.Ws.6 and 7 were examined only after 35 days and, therefore, their evidence should be rejected; is not a ground for rejecting the evidence of these witnesses.

43. In order to reject the evidence of P.Ws.6 and 7, the learned Sessions Judge has stated that the delay in preparing the statement raises doubts about the case of the prosecution. The statement recorded under Section 162 Cr.P.C. is not acceptable by the Court because the prosecution has not given convincing reasons for the delay. There is no reason for rejecting their evidence. The Supreme Court, in several cases, has held that delay in recording statements is not fatal and the evidence of the witness is not weakened. In the decision reported in 1971 SCC (Cri) 313 (Balakrushna Swain v. State of Orissa), the Supreme Court has laid down a proposition that delay per se will not destroy the credibility of the statement of the witnesses. Merely because of the delay, the evidence of witnesses cannot be doubted. Delay in recording any statement of witness can give doubt due to various reasons, but, it is for the Court to analyse the reason as to whether it is acceptable or not. In this case, the delay was explained by the witnesses and the enmity between the communities loomed at large and any human being would have in his mind the tense situation prevailing at that time. Hence, the evidence of P.Ws.6 and 7 cannot be discarded on that ground, especially when there is reasonable explanation for their act in not communicating the fact for about 35 days. Further, these witnesses also corroborate the evidence of P.Ws.1 to 3, who are the injured eye witnesses along with P.Ws.5, 8, 9 and 10. The evidence of all these eye witnesses establishes the case of the prosecution without any shadow of doubt and all the accused mentioned in their evidence are found to be guilty.

44. Further, the defence attacked the prosecution case on the point of delay in lodging the FIR. According to them, when the Police Station and the Court are in one and the same place, the delay of 3 hours is fatal to the case of the prosecution. In this case, the delay cannot be found fault with, because, within three hours, the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

express FIR reached the Magistrate at his residence. P.W.47 did not take much time in sending the information to the Magistrate. The Honourable Supreme Court, in Harbans Kaur v. State of Haryana 2005 SCC (Cri) 1213, held that even long delay in lodging the FIR could be condoned, if there is absence of motive for falsely implicating the accused and plausible explanation for the delay. Thus, if the delay is explained, then it is not fatal. In the instant case, it took hardly three hours for the FIR to be placed before the Magistrate. Hence, it can not be held that there was delay in sending the FIR to the Magistrate. Nothing was brought out in the cross-examination to show that the delay in sending the FIR has caused prejudice to the accused. Further, in the instant case, immediately after the occurrence because of the threat from the accused, who were in large number, wielding deadly weapons, the injured witnesses used a short-cut route to reach the Melur Government Hospital and from there they were sent to the Government Hospital at Madurai. P.W.47, Inspector of Police, Melur Police Station, was not present in the Police Station at the time of occurrence. On his return to the Police Station, ascertaining the facts, he went to Madurai, came back to the station and registered the FIR. We are satisfied that the delay was reasonably explained by the prosecution and it cannot be held that there was motive for the delay and the delay itself will not convert the case doubtful when the evidence of eye witnesses is natural and their presence at the place of occurrence cannot be doubted. Therefore, contrary argument as to delay is liable to be rejected.

45. It is urged by the defence that in order to prove their case, they called for the FIR register and also relied upon Ex.D-19-report of the District Collector to the Chief Minister and Ex.D-13 report of P.W.44 to the District Collector. It is also stated that in order to show that the FIR marked in the Court is different, they wanted to call for the FIR register. According to them, since it was not produced and P.W.47 did not give any plausible explanation for non-production of the same, the accused are entitled for acquittal. We are unable to accept this defence theory for the following reason. The evidence of eye witnesses is believable and the statement of the witnesses is probable. P.W.47, in his cross-examination by A1 and others, gave convincing explanation for such type of registration as well as the so-called discrepancies in the FIR. The explanation offered is reasonable and acceptable and there is no ground to reject the same. As said earlier, when there are 6 murders, that too between two communities in the same village, the Investigating Officer could not be expected to sit idle in doing the investigation systematically and as per rules. He has to see the monstrosity of the situation and attend to the things giving top priority. Despite the critical situation, P.W.47 acted quickly and, in such circumstance, the way in which the F.I.R. was registered cannot be said to be illegal. It may be an irregularity by the officer who conducted the investigation, but it is not an illegality. The irregularity itself cannot vitiate the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

trial. The reports Exs. D-19 and D-13 cannot be taken to hold that the investigation is faulty. Hence, the defect, even if any, in registering or recording the FIR will not throw out the case of the prosecution. In State of Punjab v. Hukum Singh, reported in 2005 SCC (Cri) 1679, it was held by the Supreme Court that infirmities, lapses, omissions and failure of the Investigating Officer to seize the firearms or empties for examination by ballistic expert, are not fatal in view of the categorical evidence of the eye witnesses, implicating the accused. In the same decision, the delay in forwarding the FIR to the Magistrate was found to be not fatal. The case of the prosecution is supported by the evidence of the eye witnesses. Likewise, the injuries on P.Ws.1, 2 & 3, the evidence of the Doctors (P.Ws.21, 22 and 23) and the wound certificate (Exs. P-46 to 48) clearly establish the presence of these injured witnesses at the place of occurrence. Similarly, the evidence of other witnesses, except P.W.4, supported the case of the prosecution in material particulars and no infirmity was brought out by the defence. Hence, their evidence must be accepted in toto and conviction must be based on such reliable evidence. In the case reported in 2005 SCC (Cri) 86 (Chava Ankama Rao v. State of A.P.), it was held that presence of the witnesses cannot be doubted, because injuries will prove their presence at the scene of occurrence. In the instant case, all the eye witnesses uniformly stated about the overt acts of the accused and hence the accused are guilty.

46. As far as the FIR is concerned, it is not a substantive piece of evidence. It can only be used to contradict the maker thereof or for corroborating his evidence, vide 1991 SCC (Cri) 976 (Malkiat Singh v. State of Punjab). As held by the Supreme Court in various decisions, FIR is a document to set the law in motion. In this case, the evidence of the eye-witnesses is very cogent, blemishless, unshaken and coherent. In the case reported in 1996 SCC (Cri) 210 – State of Himachal Pradesh v. Prithi Chand, it was held that FIR is only an initiation to move the machinery and investigate into a cognizable offence. When the magnitude of the offences is overwhelming, due to minor discrepancies, the case of the prosecution cannot be thrown out.

47. Learned counsel for the appellants, by relying on judgments of the Supreme Court reported in 1997 SCC (Crl)333 (Binay Kumar Singh v. State of Bihar), 1998 SCC (Cri) 633 (Baddi Venkata Narasayya v. State of A.P.) and 2000 SCC (Cri) 174 (Krishnegowda v. State of Karnataka), contended that when large number of persons are implicated as accused, conviction can be sustained only if two or more witnesses specifically speak about the presence of the accused. In the present cases, the prosecution implicated 40 persons as accused, out of which, the learned Sessions Judge convicted 17 accused under Section 302 read with 34 IPC. and imposed life imprisonment on them. The remaining accused were acquitted. We have already referred to the categorical statement of

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

the injured eye witnesses PWs.1 to 3 as well as other eye witnesses PWs-5, 8, 9 and 10. They not only refer to one accused but also vividly narrated the overt acts committed by the other accused. Considering the evidence, both oral and documentary, relied on by the prosecution as a whole, we are satisfied that the prosecution has satisfied the above test also. Further, nowhere, it is declared that, in every case, the prosecution has to be supported by two or more witnesses, speaking about the involvement and overt acts committed by each accused. After a careful and proper analysis, we have already held that the evidence of the witnesses examined on the side of the prosecution is quite acceptable. Accordingly, we reject the argument of the learned counsel for the appellants.

48. Mr. Balasubramanian, learned counsel appearing for some of the appellants, heavily relied on a Division Bench decision of this Court reported in 1990 (L.W. Criminal 175) (Johny and five others v. State) and submitted that in view of non-production of the first information report book, general diary, etc., evidence of the injured eye witnesses cannot be relied on to base the conviction. We have already referred to the decisions of the Supreme Court to the effect that merely because F.I.R. Register and general diary were not produced, it may not be a ground to reject the entire prosecution case. After a thorough discussion, we have concluded that the prosecution has established its case by placing acceptable materials.

49. As pointed out by the Hon'ble Supreme Court in a recent decision reported in 2006 (2) Scale 321 (State of A.P. v. S.Rayappa), every discrepancy in the witness statement is not fatal to the prosecution's case; and, the discrepancy, which does not materially affect the prosecution case, does not create any infirmity.

50. Considering the evidence adduced by the prosecution, namely, that of the injured witnesses, corroborated by medical evidence and wound certificates; the evidence of various eye witnesses, who spoke in detail about the occurrence without any blemish, and tested by the defence at the time of the cross-examination; the explanation by P.W.47, Inspector of Police, for the delay in lodging the FIR; the arguments with regard to the registration of the case in the FIR book; and the explanation by the prosecution with regard to Exs. D1, 13, 19 and other exhibits; would clinchingly show without any iota of doubt that the accused committed the crime. Accordingly, all the appeals are liable to be dismissed.

51. Coming to the plea of Mr.V.Gopinath, learned Senior Counsel, and Mr.Rathinam, learned counsel, appearing for the Revision Petitioners, we have already observed that the prosecution has proved the conspiracy hatched by the accused. We also arrived at the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

conclusion that the prosecution has established the motive aspect. Though the learned trial Judge has not accepted the same, for the reasons mentioned above, we hold that the prosecution has established 'conspiracy' and 'motive' beyond all reasonable doubt. The involvement and overt acts of all the accused were clearly spoken to by the injured and other eye witnesses. Though the learned trial Judge has rejected the evidence of the eye witnesses on the ground that they are close relatives of the deceased and that they all belong to Scheduled Caste, law is clear that merely because they are relatives of the deceased, their evidence cannot be ignored or rejected. In such a case, it is the bounden duty of the Court to scrutinise their evidence cautiously and arrive at a proper conclusion.

52. We have already observed that even the trial Judge had found Ex.P-1 as genuine and duly approved it. Even in respect of the charge under Section 3 (1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, we have concluded that there is enough material to hold against all the accused. But, unfortunately, the State has not preferred appeal against the acquittal of the remaining accused and only Revisions have been filed by Pws-2, 5 & 9, questioning the order of acquittal. Mr.V.Gopinath and Mr.Rathinam, by drawing our attention to the decisions reported in 1981 Crl.L.J. 1016 (Ayodhya Dube v. Ram Sumer Singh) and (2005) 1 SCC 115 (Satyajit Banerjee v. State of W.B.) would contend that it is a fit case for retrial and, if need arise, additional evidence could be recorded on retrial. It is true that in the earlier part of our Judgment, we accepted the case of the prosecution in respect of conspiracy, motive and overt acts of the accused, as spoken to by the prosecution witnesses, including the charge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. However, in the absence of appeal by the State and taking note of the fact the unfortunate incident had occurred as early as on 30.06.1997 and now, nearly 9 full years have lapsed, we are not inclined to remit the matter to the trial court for retrial regarding the charges levelled in respect of the acquitted accused. Accordingly, Crl.R.C. No.285 of 2002 and Crl.M.P. No. 9069 of 2005, filed for condonation of the delay in preferring the Crl.R.C., are liable to be dismissed.

53. In these circumstances, we confirm the conviction and sentence imposed on the appellants by the trial Court under Section 302 read with Sec.34 IPC and Sec.148 IPC. Criminal Appeal Nos.803, 863 and 871 of 2001, filed by the convicted accused, as well as Crl.R.C.No.285 of 2002 and Crl.M.P. No. 9069 of 2005 in Crl.R.C. SR No. 46945 of 2005, filed by P.Ws.2, 5 & 9, are dismissed.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Mr.P.Venkatasubramanian, who assisted the learned Advocate General in disposal of the above matters, is entitled to fees from the State. Accordingly, we fix Rs.25,000/- (Rupees twenty five thousand only) as the fees payable to Mr.P.Venkatasubramanian. The said amount shall be paid to him within a period of six weeks from to-day.

JI

Sd/
Asst.Registrar
Dated: 3.5.2006

*Amended as per the
order of this Court
dated 13.8.2007 and made herein
Sd/
Assistant Registrar
Dated: 22.8.2007

/true copy/

Sub Asst.Registrar

To

1. The Principal Sessions Judge,Salem.

2. The Judicial Magistrate, Melur.

3. -do- Thro The Cheif Judicial Magistrate,
Madurai.

4. The Superintendent,
Central Prison, Madurai.

5. The Deputy Superintendent of Police,
District Crime Branch, Melur Police Station,
Madurai.

6. The Officer in Charge,
Hasthampatti Police Station, Salem.

To be Substituted to the order already despatched on 7.7.2006.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. The District Collector, Madurai.

8. The Director General of Police,
Mylapore, Chennai.600 004.

9. Thiru. P. Venkatasubramanian, Advocate,
11, Subbrarayan Street, Shenoy Nagar,
Chennai-30.

10. The Secretary to Law Department,
State of Tami Nadu, Fort St George,
Chennai 600 009.

Copy to
Public Proseuctor,
High Court, Madras

+ 1 cc to The Public Prosecutor,
High Court, Chennai 104. SR No.19726
+ 3 ccs to Mr.K. Jaganathan,
Advocate SR No.19970

Crl. Appeal Nos.803, 863 & 871/2001, Crl.R.C. No.285 of 2002 and Crl.M.P. No.9069 of 2005 in Cr.R.C.SR.No.46945 of 2005.

AK(CO)
SR/4.5.2006

RVL 06.07.2006
kk 23/8

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/